

## Notice of Allowability

Application No.

09/09,682

Examiner

Elena Tsouy

Applicant(s)

GILLMAN ET AL.

Art Unit

1762

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to May 3, 2004.
2. ☒ The allowed claim(s) is/are 2.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of the:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.  
(a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached  
1) ☐ hereto or 2) ☒ to Paper No./Mail Date 10.  
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of  
Paper No./Mail Date \_\_\_\_\_.  
Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date July 23, 2003
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 3, 2004 has been entered.

***Response to Amendment***

2. Amendment filed on May 3, 2004 has been entered. Claim 1 has been cancelled. Claims 2-4 are pending in the application. Claims 3, 4 are withdrawn from consideration as directed to a non-elected invention.

**EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The status of claims 2-4 has been changed to include proper identifiers.

"2. (Twice Amended)" has been changed to -- 2. (Currently Amended) --.

"3. (Withdrawn As Non-Elected)" has been changed to -- 3. (Withdrawn) --.

"4. (Withdrawn As Non-Elected)" has been changed to -- 4. (Withdrawn) --.

Authorization for this examiner's amendment was given in a telephone interview with James A. Sheridan on May 26, 2004.

Cancel claims 3 and 4 as directed to a non-elected invention.

***Allowable Subject Matter***

4. **Claim 2** is allowed. The following is an examiner's statement of reasons for allowance:

Claim 2 is allowed because the prior art of the record does not teach or suggest a step of granulating pigment powder such as iron oxide powder in a mixer into compacted pigment granules of 0.30-1.20 mm diameter before mixing the powder with a solution of a binder. Closest prior art of Jungk teaches that a pigment powder such as iron oxide powder can be combined with a binder for better dispersability in a concrete (See column 3, lines 28-30) and can be granulated for better handling properties with no dust raise (See column 3, lines 13-18) by mixing the powder with a solution of a binder in a mixer thereby producing granulated pigment powder of 1.00 mm diameter combined with the binder. However, Junk does not suggest that the dispersable pigment granules can be made by first pre-granulating the powder in the same mixer without the aid of a solution of a binder and then mixing the powder granules with a solution of a binder so that to obtain encapsulated pigment granules.

Closest prior art of Leon et al teach that dusty pigment powder can be granulated *with or without* the aid of a solution of a binder in a mixer for better handling properties (See column 2, lines 10-16). However, Leon et al cannot remedy Jungk because neither of references suggests that pigment powder can be first pre-granulated and then combined with a binder by encapsulating a pre-granulated powder.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (571) 272-1429. The examiner can normally be reached on Mo-Thur. 9:00-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (571) 272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'ETsoy', is positioned above the typed name and title.

Elena Tsoy  
Primary Examiner  
Art Unit 1762

May 27, 2004